



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2096 OF 2024

Parvin Bee Shaikh Asif

Vs.

Hon'ble Chief Minister, Minister of Urban Development Department,
Mantralaya, Mumbai and Others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.D. Chopde, Advocate for the Petitioner.
Mr. H.R. Dhumale, AGP for the Respondent/State.
Mr. A.P. Dalmesh, Advocate for Respondent No.3/Caveator.
Mr. A.R. Prasad, Advocate for Respondent No.4.

CORAM: SIDDHESHWAR S. THOMBRE, J.

DATED : 08th OCTOBER, 2025

1. Heard Mr. S.D. Chopde, learned counsel for the petitioner, Mr. H.R. Dhumale, learned AGP for respondent No.1/State, Mr. A.P. Dalmesh, learned counsel for respondent No.3/Caveator and Mr. A.R. Prasad, learned counsel for respondent No.4.

2. The petitioner is disqualified by the District Collector as per Section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "the Act"). Section 44(1) (e) of the Act reads as under:-

"Section 44(1)(e):-

44. Disqualification of Councillor during his term of office.—

(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he—

(a)

(b)

(c)

(d)

(e) *has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966) or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure],*

and he shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant:

Provided that—

(i) a Councillor shall not be disqualified under clause (c) if he is engaged for the Council without receiving any remuneration therefor or appears and conducts his own case in a court of law or before any authority under this Act against the Council irrespective of whether such a Councillor is a legal practitioner by profession or not;

(ii) for the purpose of clause (d) when the Councillor applies for leave, such leave shall be deemed to have been granted unless it is refused within a period of sixty days from the date of his application.”

3. Thus, in view of Section 44(1)(e) of the Act, the Councillor is to be disqualified, if he has constructed an illegal or unauthorized structure violating the provisions of the Act framed thereunder and therefore, it is expected on the part of the District Collector to record specific findings to that effect. But, after going through the order passed by the District Collector, I find that there are no such finding that after the petitioner got elected, she constructed unauthorized structure to incur

disqualification within the meaning of Section 44(1)(e) of the Act. Therefore, without going into the merits of the matter, on this count, the matter needs to be remanded back to the Collector. The District Collector shall consider the provisions of the law and the record and thereafter, by giving an opportunity of hearing to all the parties shall pass an appropriate order on its own merits, without being influenced by the earlier order passed by him as well as by the State Government. All the points are kept open.

5. The parties to appear before the District Collector, Buldhana on 03.11.2025.

6. District Collector, Buldhana is directed to decide this proceeding within a period of two months after the appearance of the parties.

(SIDDHESHWAR S. THOMBRE J.)

Privel